(3)

FILED
MAR 13 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-892

In The Supreme Court of the United States

FATHI YUSUF MOHAMMED YUSUF, a/k/a FATHI YUSUF; WALEED MOHAMMED HAMED, a/k/a WALLY HAMED; WAHEED MOHAMMED HAMED, a/k/a WILLIE YUSUF; MAHER FATHI YUSUF, a/k/a MIKE YUSUF; ISAM MOHAMAD YOUSUF, a/k/a SAM YOUSEF; UNITED CORPORATION, dba Plaza Extra Supermarkets, and NEJEH FATHI YUSUF,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

REPLY TO BRIEF IN OPPOSITION

LEON FRIEDMAN, ESQ.
Counsel of Record
148 East 78th Street
New York, N.Y. 10021
(212) 737-0400

GORDON RHEA, ESQ.
RICHARDSON, FITZPATRICK, WESTBROOK AND BRICKMAN LLC
1037 Chuck Dawley Blvd.
Mount Pleasant, S.C. 29464
(843) 727-6500

Attorneys for Petitioners

REPLY BRIEF FOR PETITIONER

The government seeks to justify the overbroad search warrant in this case -- calling for a search for "any other records of money laundering and illegal activities" -- by arguing that this expansive language was somehow limited by the language "that precede[d] it." (Government's Opposing Brief, "GOB" at 12). But none of the cases cited by the government (GOB at pp. 12-14) support the government's claim. Indeed, most of the cases cited uphold Petitioner's position here and require this Court to review the Third Circuit decision below.

In *United States v. Pindell*, 336 F.3d 1049, 1053 (D.C. Cir 2003), the government was investigating a local police officer who used his authority to rob customers of local prostitutes. To obtain evidence of the crime, the government sought a search warrant of the defendant's home. The warrant called for the seizure of the following items: "green card, and driver's license [in] the name of Osman Dainkeh [one of the officer's victims] cash money in the amount of approximately $500, a white gold chain, a dark blue police uniform" and "*any other evidence of a violation of Title 18 U.S.C. 242*" (emphasis in original). The defendant argued that the broad catch-all language at the end of the description was too broad. The Court of Appeals rejected that argument.

> We have no doubt that had the warrants *merely* authorized the seizure of "evidence of a violation of Title 18 U.S.C. § 242, *they would indeed have been impermissibly broad*. But that phrase did not stand alone, and instead came in the same sentence as, and at the conclusion of,

> a quite specific list of items to be seized. That list constrained the interpretation of the last phrase, making it reasonably clear that the warrants did not authorize the seizure of just any violation of § 242, but rather of evidence relating to such a violation in connection with Osman Dainkeh. 336 F.3d at 1053 (emphasis added)

In this case, we have precisely the situation condemned by the *Pindell* court – a broadly worded warrant that allows seizure of evidence of *any* crime, let alone any evidence of a specific federal crime. The warrant calls for the seizure of "any and all records of money laundering and illegal business activities, including" a list of specific federal crimes, such as money laundering, conspiracy, mail fraud and wire fraud.[1] The categories of evidence to be seized included "any other records of money laundering and illegal activities." (See GOB Appendix, document entitled "Exhibit B"). The phrase "any business activities" was not limited by any words that preceded it since the phrase "money laundering and illegal business activities" signifies that each term stands on its own as a separate category.

In *United States v. Riley*, 906 F.2d 841 (2d Cir. 1990), the warrant called for the seizure of "evidence of the offense of conspiracy to distribute controlled substances." The list contained a specific list of material and then added a list of additional financial

---

[1] Contrary to the government's statement in its "Question Presented," there were no tax violations alleged in either the search warrant affidavit or listed in the search warrant itself, see Exhibit B to GOB.

records covering the investment of the proceeds of illegal drug transactions, as well as "and other items that constitute evidence of the offenses of conspiracy to distribute controlled substances and distribution of the same." The Court of Appeals (with one judge dissenting) upheld the warrant, finding that the warrant did not "justify the examination of every piece of paper in a suspect's home." 966 F.2d at 845. Here however, a search for any record of an "illegal activity" would allow the agents to seize every piece of paper, including material in women's handbags, children's schoolbags, airducts and cisterns, which is exactly what occurred here.

United States v. Ables, 167 F.3d 1021, 1033 (6th Cir. 1999) involved charges of money laundering and illegal gambling business. The warrant contained a broad list of material to be seized as well as "other items evidencing the obtaining, secreting, transfer and/or concealment of assets and the obtaining, secreting, transfer and/or expenditure of money." The court held that the description of specific items to be seized earlier in the warrant limited the definition of the "other items" specified in the final catch-all provision.

In another case cited by the government, *United States v. Travers*, 233 F.3d 1327 (11th Cir. 2000), the warrant called for a broad list of financial documents, but it was limited to documents relating to false identity or fraud, unlike the situation here which called for evidence of any "illegal activit[y]." In *United States v. Young*, 745 F.2d 733, 758 (2d Cir. 1984), the warrant called for a broad range of evidence of a conspiracy to distribute controlled substances. In *United States v. Wuagneux*, 683 F.2d 1343, 1350-151

(11th Cir. 1982), the warrant called for a broad range of documents relating to a "kickback" scheme. The court upheld the warrant since the search warrant affidavit contained a very detailed description of what scheme was involved. In this case, there was no search warrant affidavit that defined the types of crimes involved and gave guidance to the searching agents. Similarly in *United States v. Logan,* 250 F.3d 350, 365 (6th Cir. 2001), a broad warrant was upheld because of the limitation and specific descriptions of the crimes contained in the search warrant affidavit.

Finally, in *Andresen v. Maryland*, 427 U.S. 463 (1976), warrants were issued to search for evidence of a single, allegedly fraudulent real estate transaction. The defendant in that case had agreed that, for the most part, the warrants were "models of particularity" but argued "they were rendered fatally 'general' by the addition, in each warrant, to the exhaustive list of particularly described documents, of the phrase 'together with other fruits, instrumentalities and *evidence of crime* at this (time) unknown. . . .'" 427 U.S. 479 (emphasis added). Defendant argued that the italicized language authorized a general search for evidence of "any crime" whatsoever. This Court disagreed, finding that this language could not be read in isolation and that the "term 'crime' in the warrants refers only to the crime of false pretenses with respect to the sale of Lot 13T." 427 U.S. at 479. This interpretation was certainly plausible in the context of warrants unquestionably issued to search for evidence of a single crime involving a single transaction. In addition, the searching officers did have the advantage of possessing the search warrant affidavits to assist them in limiting the search.

This case is unprecedented in permitting such a

broad search based on such expansive language in a warrant and would create a conflict with the decisions of numerous other circuits which have rejected warrants with such broad language. *See Rickert v. Sweeney*, 813 F.2d 907, 909 (8th Cir. 1987) (a warrant's factual statement, limited only by references to the general conspiracy and tax evasion statutes, did "not limit the search in any substantive manner"); *United States v. Spilotro*, 800 F.2d 959 (9th Cir. 1986)(warrant for records, documents, cash and other items which were evidence of any of 13 listed federal statutes impermissibly broad); *Voss v. Bergsgaard*, 774 F.2d 402 (10th Cir. 1985) (overbroad warrant authorizing seizure of various categories of documents pertaining to conspiracy to defraud government); *United States v. Abrams*, 615 F.2d 541, 543 (1st Cir. 1980) (warrant for "certain business and billing and medical records" showing actual and "fraudulent services" alleged to have been performed in a scheme to defraud the United States and submit false Medicare claims in violation of 18 U.S.C.§ 1001, overbroad).

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Dated: March 13, 2007

Leon Friedman
Counsel of Record
148 East 78th Street
New York, N.Y. 10021
(212) 737-0400

Gordon Rhea, Esq.
Richardson, Fitzpatrick
Westbrook and Brickman
1037 Chuck Dawley Blvd.
Mount Pleasant, S.C.29464
(843) 727-6500

Attorneys for Petitioners